

UNITED STATES BANKRUPTCY COURT  
MIDDLE DISTRICT OF PENNSYLVANIA

In Re: )  
 ) Case No. 18-03534  
Maria Gongora )  
 )  
 )  
 )  
Debtor(s). )

CHAPTER 7 TRUSTEE'S APPLICATION TO RETAIN  
BK GLOBAL REAL ESTATE SERVICES TO PROCURE CONSENTED PUBLIC SALE NUNC PRO  
TUNC TO APRIL 09, 2019 PURSUANT TO 11 U.S.C. § 327

COMES NOW the Chapter 7 Trustee, Robert Sheils, files this Application to Retain BK Global Real Estate Services to procure consented public sale Nunc Pro Tunc to and pursuant to 11 U.S.C. § 327, states as follows:

1. Robert Sheils, is the duly qualified and acting Chapter 7 Trustee of the bankruptcy estate of Maria Gongora .
2. An asset of the bankruptcy estate is real property located at 110 RIVERFRONT TER POCONO LAKE, PA 18347, and which is legally described as follows:

**Parcel Number:** 03/20E/1/129  
**Tax ID:** 03539703339344  
**Zoning:** R1  
**City/Municipality/Township:** COOLBAUGH  
**Census Tract:** 420893003.011038  
**Carrier Route:** H087  
**Abbreviated Description:** LOT:89 BLK:33 DIST:03  
CITY/MUNI/TWP:COOLBAUGH SUBD:RIVERSIDE ESTS LOT 89 SEC 3 MAP  
REF:MAP NO: 5397-03

hereinafter referred to as the "Real Property".

3. The Debtor(s) have not declared the Real Property as exempt.
4. The Debtor(s) listed the Real Property on their schedules as having a value of \$75,000.00
5. The Real Property is subject to the following mortgage(s) or lien(s):
  - a. First Mortgage Holder: Mr. Cooper
6. The Secured Creditors holding mortgages or liens pursuant to the Debtor's Schedules or filed proofs of claims setting forth the following balances due and owing on the Real Property:
  - a. Mr. Cooper in an amount exceeding \$132,759.00
7. Based upon the market value of the Real Property provided by the Debtor(s) and the Proof of Claim [or schedules], of the Debtor(s), the first mortgage debt is in excess of the market value of the Real Property.
8. The Handbook for Chapter 7 Trustees published by the Executive Office of the United States Trustee, states on pages 4 – 14 under Section 9 "Sales of Assets" (a) General Standards "A Trustee may sell assets only if the sale will result in a meaningful distribution to creditors. The Section further states "the Trustee may seek a "carve-out" from a secured creditor and sell the property at issue if the "carve-out" will result in a meaningful distribution to creditors. Further, the Section states "The Trustee must also consider whether the cost of administration or tax consequences of any sale would significantly erode or exhaust the estate's equity interest in the asset."
9. BK Global Real Estate Services ("BK Global") provides services to trustees as BK Global has expertise and experience in assisting the trustee in negotiating with secured creditors to accomplish the following:
  - a. Sell the Real Property under 11 U.S.C. § 363(b) to whichever party the Chapter 7 Trustee determines to have made the best qualified offer with the sale approved by the Court, pursuant to 11 U.S.C. § 363;

- b. Obtain the release the senior mortgage and waive all of its claims against the estate with respect to the Real Property (including any deficiency claims resulting from the proposed sale);
  - c. Work with the secured mortgage holder to enter into an agreement for an 11 U.S.C. § 506 surcharge to pay all of the closing expenses associated with the § 363 sale, including the payment of a six percent (6%) real estate brokerage commission and reimbursement of their out-of-pocket expenses to BK Global and any associated real estate professional, paid from the proceeds of the sale, and provide a meaningful carve out of 3% - 5% of the sale price for the benefit of the Bankruptcy Estate; and
  - d. Make certain the amount of the carve out is clearly set out in the motion to sell the Real Property pursuant to 11 U.S.C. § 363.
10. BK Global will assist the Chapter 7 Trustee in negotiations with the first mortgage holder to obtain the consent of the first mortgage holder for the sale of the Real Property. The secured creditor will agree to a carve out from the sale price of the Real Property for the payment of a six percent (6%) real estate commission to BK Global, and any associated real estate professional, and a carve out of 3% - 5% of the sale price paid to the Bankruptcy Estate, which will result in a meaningful distribution. Upon a successful resolution with the Secured Creditor a separate motion will be filed seeking approval of the settlement terms and conditions.
11. BK Global will not be entitled to any fees if the first mortgage holder does not grant its consent or the Court does not grant the motion to approve the sale of the Real Property.
12. In no event will the bankruptcy estate have any obligation to pay BK Global or associated real estate professional for their services, or to pay the customary title and closing services. The terms of the listing agreement and this Application provide that BK Global or associated real estate professional are only entitled to payment if and when (a) secured creditor grants its consent, (b) the motion to approve sale is granted and (c) the Real Property is sold, in which

event BK Global or associated real estate professional will receive a six percent (6%) real estate brokerage commission and obtain reimbursement of any out-of-pocket expenses.

13. The Trustee believes that the highest and best value for the Real Property will be generated through a sale in which the Real Property is widely marketed to the public and offered at the highest price that the market will bear. The Trustee further believes that such a sale is in the best interest of the Debtor's bankruptcy estate but can only be achieved if the Secured Creditor's consent is first obtained. The Chapter 7 trustee believes that retaining BK Global and/or an associated real estate professional to obtain the secured creditor's consent is in the best interest of the Debtor's bankruptcy estate.
14. The Trustee submits that the terms of employment and compensation as set out in this application and the listing agreement (Exhibit "A"), are reasonable in light of the extensive experience of BK Global and any associated real estate professional, and the nature of the services they provide.
15. BK Global attested that it is a disinterested person within the meaning of Section 101(14) of the Bankruptcy Code and Federal Rule of Bankruptcy Procedure 2014 and 2016(a). Attached hereto as Exhibit "B" is an Affidavit of Disinterestedness of BK Global. BK Global also attests, pursuant to Bankruptcy Rule 2016, that it shall not split or share its fee with any individual or entity other than listing agent or a buyer's agent, if applicable.

WHEREFORE, based upon the foregoing, the Chapter 7 trustee seeks the Court's authority to retain BK Global in this case and requests that the Court approve the compensation arrangements set forth in the listing agreement and this application, pursuant to Sections 327, 328(a) and 330 of the Bankruptcy Code; and for such other and further relief as the Court determines is appropriate.

/s/ Robert P. Sheils, Jr., Esquire

Robert P. Sheils, Jr., Esquire

Chapter 7 Trustee

Sheils Law Associates, P.C.

108 North Abington Road

Clarks Summit, PA 18411

(570) 587-2600

(570) 585-0313 – Facsimile

## EXHIBIT A

### BK Global Real Estate Brokerage Listing Agreement

This Real Estate Brokerage Listing Agreement ("Agreement") is between

Robert Sheils ("TRUSTEE") and BK Global Real Estate Services LLC ("BROKER")

**Authority to Sell Property:** Trustee gives Broker the right to be the EXCLUSIVE BROKER in the sale of the real and personal property (collectively "Property") described below:

110 RIVERFRONT TER POCONO LAKE, PA 18347

Upon full execution of a contract for sale and purchase of the Property and court approval, all rights and obligations of this Agreement will automatically extend through the date of the actual closing of the sales contract. Trustee and Broker acknowledge that this Agreement does not guarantee a sale. This Property will be offered to any person without regard to race, color, religion, sex, handicap, familial status, national origin, or any other factor protected by federal, state, or local law. Trustee certifies and represents that she/he/it is legally entitled to convey the Property and all improvements.

**Price:** The starting listing price of the property will be: \$ \_\_\_\_\_. If there are no acceptable offers after 15 days, the list price will be reduced 5% and will reoccur every 15 days until the listing expires or if an acceptable offer is received.

**Brokers Obligations:** Broker will assist the Trustee to make commercially reasonable efforts to procure the consent and agreement of the senior mortgagee ("Secured Creditor") to:

- a) Sell the Property under 11 U.S.C. § 363(b) to whichever third party you determine to have made the best qualified offer during a public sale approved by the court or agree to 11 U.S.C. § 363(k) and place a credit bid on the Property from the estate;
- b) Release its lien with respect to the Property; and
- c) Agree to a 11 U.S.C. § 506 surcharge to (x) pay our fee and expenses, any commission payable to the local real estate broker and all other fees and expenses associated with the sale, and (y) provide a carve-out for the benefit of allowed unsecured creditors of the estate.

**Brokers Duties:** Broker or associated real estate professional duties will include but will not be limited to the following services;

- Researching the real estate, running title and lien searches to identify creditors for resolution and any title issues.
- Advising the trustee of any issues and discuss potential resolutions.
- Conducting the resolutions under the trustee's direction.
- Assisting the trustee in the collection of documents and information for employment.
- Making and identifying the correct contact with the secured creditors.
- Notifying the secured creditor of the upcoming sale and identifying servicer requirements.
- Assisting the trustee in establishing market value and negotiating with the Servicer an acceptable sales price and establishing a carve-out.
- Development of online marketing, email campaign and full nationwide marketing services.
- Conducting an onlinesale.
- Use of the BK Global technology platform.
- Assist the trustee in the review of all offers and coordinate the final documentation of the offer accepted by the trustee.
- Managing contract requirements such as inspections, appraisals and HOA applications.
- Coordinating closings and assisting the trustee in the collection of required information for court filing.
- Closing the transaction and ensure the estate has received the appropriate funds.
- Inspecting the property and completing a broker's price opinion.
- Listing the property in the multiple listing service (MLS).
- Posting a for sale sign in the yard and coordinating showings.

**Trustee Obligations:** In consideration of **Broker's** obligations, **Trustee** agrees to:

- a) Cooperate with **Broker** in carrying out the purpose of this Agreement
- b) Provide **Broker** with keys to the Property and make the Property available for **Broker** to show during reasonable times.
- c) File all court motions and documents in a timely manner to ensure a successful sale.
- d) Advise **Broker** of any special issues or court requirements.


**Term of Agreement:** The term of this Agreement will commence when signed by the **Trustee** and the court approves it. This Agreement will automatically terminate upon the closing of the sale of the Property, or it may be terminated by either party for any or no reason after 180 days from commencement. In addition, this Agreement will be terminated if the **Trustee** files a Report of No Distribution, files a Notice of Abandonment of the subject property, or submits a Trustee's Final Report to the Office of the United States Trustee.

**Broker** acknowledges and agrees that (a) the **Trustee** is not executing this Agreement in an individual capacity, but solely as trustee of the estate, (b) **Broker** does not and will not have any right or claim with respect to the estate and (c) **Brokers** sole recourse for payment of real estate commission, fees and expenses will be paid at closing with court approval and under the Consent of the Secured.

This Agreement constitutes our complete agreement on this matter and supersedes all prior agreements and representations concerning the same. It may not be modified or amended except in a writing signed by both parties.

The effective date of this agreement is \_\_\_\_\_.

**BROKER:**

By:  Acknowledged and agreed as of the date set forth above.  
Patrick Butler, Broker-in-Charge

**TRUSTEE:**

\_\_\_\_\_ Acknowledged and agreed as of the date set forth above.  
Robert Sheils, not individually but solely as Trustee in the referenced matter.